

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CIVIL ACTION NO:

FEDERAL NATIONAL MORTGAGE
ASSOCIATION

PLAINTIFF

v.

WOODY S. KISLOWSKI, ROWENA B.
KISLOWSKI AND STATE OF MAINE-MAINE
REVENUE SERVICES

DEFENDANTS

COMPLAINT FOR FORECLOSURE

NOW COMES the Plaintiff, Federal National Mortgage Association, by and through its attorneys, Bendett & McHugh, P.C., and complains against the Defendants pursuant to 14 M.R.S. § 6321 et seq., saying further as follows:

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction pursuant 28 U.S.C. § 1332 because the Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. Any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought under 28 U.S.C. § 2201.

2. Venue is properly exercised pursuant to 28 U.S.C. §1391(b)(2) insofar as all or a substantial portion of the events that give rise to the Plaintiff's claims transpired in Maine and the property is located in Maine.

PARTIES

3. Federal National Mortgage Association, ("Plaintiff") is organized and existing under the laws of the United States of America, having a principal place of business at 3900 Wisconsin Avenue, NW, Washington, DC 20016-3899.
4. Woody S. Kislowski and Rowena B. Kislowski, ("Defendants") are residents of Neenah, County of Winnebago and State of Wisconsin.
5. State of Maine-Maine Revenue Services, ("Party in Interest") upon information and belief, has an address located at 24 State House Station, Augusta, ME 04333-0024.

FACTS

6. Defendants Woody S. Kislowski and Rowena B. Kislowski are the owners of certain real property located at 1 Old Quarry Road f/k/a 9 Triple Oaks Road, Cape Neddick, Maine (the "Premises") by virtue of a deed from Charles T. Houser, dated March 21, 2011, and recorded in the York County Registry of Deeds on April 8, 2011 in Book 16077 at Page 406 and being more particularly described by the attached legal description. *See Exhibit A.*
7. On October 20, 2014, the Defendants, Woody S. Kislowski and Rowena B. Kislowski, executed and delivered to Green Tree Servicing LLC a certain promissory note in the original principal amount of \$184,900.00 (the "Note"). *See Exhibit B.*
8. The Plaintiff is entitled to enforce the Note as it is endorsed in blank.
9. Plaintiff certifies that the owner of the Note is Federal National Mortgage Association.

10. To secure said Note, in the amount of \$184,900.00, the Defendants, Woody S. Kislowksi and Rowena B. Kislowksi, executed and delivered a Mortgage in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Green Tree Servicing LLC, dated October 14, 2014 and recorded in the York County Registry of Deeds in Book 16917 at Page 573 securing the property located at 1 Old Quarry Road, Cape Neddick, ME, 03902 (the "Mortgage"). *See* Exhibit C.
11. Said Mortgage was assigned from Mortgage Electronic Registration Systems, Inc., as nominee for Green Tree Servicing LLC to Plaintiff by an Assignment of Mortgage, dated October 8, 2015 and recorded on October 9, 2015 in Book 17112 at Page 910 of the York County Registry of Deeds. *See* Exhibit D1.
12. Said Mortgage was assigned from Green Tree Servicing LLC to Plaintiff by a Quitclaim Assignment of Mortgage, dated June 8, 2016 and recorded on August 9, 2016 in Book 17294 at Page 243 of the York County Registry of Deeds. *See* Exhibit D2.
13. Plaintiff, directly or through its agent, is in possession of the original Note, Mortgage and any assignments.
14. Plaintiff is the party entitled to collect the debt evidenced by said Note and is the party entitled to enforce the Mortgage, and has the right to foreclose the Mortgage.
15. State of Maine-Maine Revenue Services claims or may claim an interest in the Premises by virtue of a lien, in the amount of \$4,145.68, dated October 19, 2017 and recorded in Book 17590 at Page 528 of the York County Registry of Deeds. *See* Exhibit E.
16. Defendants Woody S. Kislowksi and Rowena B. Kislowksi are presently in default of the Note, having failed to make the monthly payment due August 1, 2017, and having

failed to make all payments due thereafter. As a result thereof, Defendants have breached a condition of the Mortgage.

17. In compliance with the Note and Mortgage and/or 14 M.R.S.A. § 6111, on or about September 28, 2018, Plaintiff sent a Notice of Default to the mortgagor and any co-signor against whom the mortgagee is enforcing the obligation secured by the mortgage, by certified mail, return receipt requested and/or by regular mail, postage prepaid (herein after referred to as the “Demand Letter”). *See* Exhibit F.
18. The Defendants, Woody S. Kislowksi and Rowena B. Kislowksi, have failed to cure the default prior to the expiration of the Demand Letter. In accordance with the Note and the Mortgage, the Plaintiff has declared the entire principal amount outstanding, accrued interest thereon, and all other sums due under the Note and Mortgage to be presently due and payable.
19. The total unpaid principal balance owed under the Note and Mortgage as of January 17, 2018 is \$176,928.96 plus interest, late charges, expenses and reasonable attorney’s fees and costs.
20. Plaintiff anticipates that additional disbursements will be made for attorney’s fees and other services rendered during the foreclosure and sale.

COUNT I – FORECLOSURE

21. The Plaintiff, Federal National Mortgage Association, repeats and realleges paragraphs 1 through 20 as if fully set forth herein.
22. This is an action for foreclosure and title to real estate located at 1 Old Quarry Road f/k/a 9 Triple Oaks Road, Cape Neddick, ME, 03902, County of York, and State of Maine. *See* Exhibit A.

23. The Plaintiff, Federal National Mortgage Association, is the holder of the Note pursuant to endorsement into blank by the previous holder and physical possession of the Note.

As such, Plaintiff has the right to foreclosure upon the subject property.

24. Federal National Mortgage Association is the current owner and investor of the Mortgage and Note.

25. The Defendants, Woody S. Kislowksi and Rowena B. Kislowksi, are presently in default on said Mortgage and Note, having failed to make the monthly payment due August 1, 2017. As a result, Woody S. Kislowksi and Rowena B. Kislowksi have breached the condition of the Mortgage and Note.

26. The total unpaid principal balance owed under the Note and Mortgage as of January 17, 2018, is \$176,928.96 plus interest, late charges, expenses and reasonable attorney's fees and costs.

27. The record established through the York County Registry of Deeds indicates that there are no public utility easements recorded subsequent to the Mortgage and prior to the commencement of these proceedings affecting the mortgaged premises at issue herein.

28. By virtue of the Defendants' breach of condition, the Plaintiff, Federal National Mortgage Association, hereby demands a foreclosure on said real estate.

29. Notice in conformity with 14 M.R.S.A. §6111 was sent to the Defendants, Woody S. Kislowksi and Rowena B. Kislowksi, on September 28, 2018 as evidenced by the Certificate of Mailing. *See* Exhibit G.

30. The Defendants, Woody S. Kislowksi and Rowena B. Kislowksi, are not in the Military as evidenced by the attached Exhibit H.

COUNT 11 – UNJUST ENRICHMENT

31. The Plaintiff, Federal National Mortgage Association repeats and re-alleges paragraphs 1 through 30 as if fully set forth herein.
32. Mortgage Electronic Registration Systems, Inc., as nominee for Green Tree Servicing LLC, predecessor-in-interest to Federal National Mortgage Association, loaned the Defendants, Woody S. Kislowksi and Rowena B. Kislowksi, \$184,900.00. See Exhibit B.
33. The Defendants, Woody S. Kislowksi and Rowena B. Kislowksi, have failed to repay the loan obligation pursuant to the terms of the Note and Mortgage.
34. As a result, the Defendants, Woody S. Kislowksi and Rowena B. Kislowksi, have been unjustly enriched to the detriment of the Plaintiff, Federal National Mortgage Association, as successor-in-interest to Mortgage Electronic Registration Systems, Inc., as nominee for Green Tree Servicing LLC by having received the benefits described above without repayment pursuant to the terms of the Note and Mortgage.
35. As such, the Plaintiff, Federal National Mortgage Association, is entitled to relief

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff, Federal National Mortgage Association, prays this Honorable Court: Find that the Defendants entered into a contract for a sum certain in exchange for a security interest in the subject property.

- a. Determine that there has been a breach of condition of the Mortgage;
- b. Find that Plaintiff, Federal National Mortgage Association, is entitled to enforce the terms and conditions of the Note and Mortgage;

- c. Determine the amounts due under the Note and secured by the Mortgage, including principal, interest, reasonable attorney's fees, court costs and other expenses;
- d. Find that the Defendants are liable for any deficiency balance remaining due to Plaintiff after the sale of the mortgaged real estate and application of the proceeds of sale (this prayer is void for any Defendant that did not execute the Note or Guaranty and for any Defendant who has been granted discharge in bankruptcy);
- e. Issue a Judgment of Foreclosure and Sale in conformity with Title 14, M.R.S. § 6322;
- f. Order exclusive possession of the real estate to Plaintiff upon the expiration of the statutory ninety (90) day period of redemption and direct the clerk to issue a Writ of Possession at the request of Plaintiff;
- g. Find that by virtue of the Note and Mortgage, the Defendants, Woody S. Kislowski and Rowena B. Kislowski, have been unjustly enriched at the Plaintiff's expense; and

h. Order such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

Federal National Mortgage Association

By its Attorneys,
BENDETT & MCHUGH, P.C.

Dated: November 11, 2018

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Exhibit A

LEGAL DESCRIPTION

The following described property:

A certain lot or parcel of land, with any buildings thereon, situated in the Town of York, County of York and State of Maine, further bounded and described as follows:

A certain lot or parcel of land with buildings thereon situated on the Easterly side of the Subdivision road which is Westerly of the Greenleaf Parsons Road and which is more particularly described as Lot Number 14 as shown and delineated on a Subdivision Plan entitled "Plan of Property of Carol B. Trafton" which Plan was recorded in the York County Registry of Deeds on March 3, 1973 in Plan Book 58, Page 37.

Assessor's Parcel No: 0096 0136X